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TAGS: [KIPR](#) [ECON](#) [USTR](#) [EINV](#) [TU](#)  
SUBJECT: AS CALLS FOR REFORM INCREASE, TURKISH PATENT LAW  
MOVES SLOWLY AHEAD

REF: ANKARA 1726

Classified By: Economic Counselor Dale Eppler for reasons 1.4 (b) and (d).

¶1. (C) Summary. On November 20, Turkey's International Investor Association (YASED) released a report on the status of intellectual property rights in Turkey and the economic importance of improving those rights. The report, which YASED presented directly to Prime Minister Erdogan, estimates that Turkey could realize an additional USD 19.2 billion in FDI if it raised its regulatory regime to the level of Hungary's, and YASED called for a series of both social and legislative reforms to improve Turkey's IPR environment. Ahmet Kocer of the Turkish Patent Institute is confident that the long-delayed patent law will eventually pass, but noted that it may be too complicated for the GOT to take on before March municipal elections. Kocer said there is "zero" likelihood that two pending amendments that would reduce IPR protections (reftel) will be approved. He predicted that a stopgap patent law would be approved by year's end to reverse a Constitutional Court decision in July that will invalidate almost all pending IPR cases if it is not addressed before January. Ministry of Justice officials also expect legislation to reverse the court decision, but raised the disturbing possibility that the Hakki Koylu amendment to the patent law (see reftel) might be passed as a temporary stopgap to fix the judicial problem, which would significantly reduce IPR protection for foreign-produced goods in Turkey. End Summary.

Investors Call for Action on IPR  
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¶2. (U) On November 20, Turkey's International Investor's Association (YASED) released a report entitled "Protection of Intellectual Property Rights in Turkey: Impact on Foreign Direct Investment." YASED presented the report directly to Prime Minister Erdogan during their annual meeting with him. The report highlights the importance of IPR to Turkey and praises the progress made to date on improving the legislative environment, which YASED attributes largely to the EU accession process. They note, however, that the legislative successes have not translated into enforcement on the ground, and that Turkey remains "one of the most problematic countries in the world regarding the protection of intellectual property rights."

¶3. (U) In the report, YASED stresses that in the current troubled economic climate, it is even more important to improve IPR protection as a means of securing foreign investment. According to their research, an improvement in the IPR protection regime to the same level as Hungary (not exactly a lofty goal) would result in a potential increase of

USD 19.2 billion in badly-needed FDI for Turkey. They estimate the follow-on effects of that level of FDI as 150,000 new jobs (especially in manufacturing and technology-intensive industries), USD 13 billion in new exports, and a 0.7 percent increase in GDP.

¶4. (U) To help achieve an improved IPR environment, YASED lays out a series of reforms, including:

- Increased training for judges and prosecutors;
- Increased numbers of specialty courts dedicated to IPR;
- More training for law enforcement officers;
- A strengthened social consensus against the unregistered economy, where most IPR violations take place;
- Establishment of a central authority to fight against the unregistered economy;
- Amendments in the trademark law to address a recent Constitutional Court decision (see para. 7);
- Establishment of a panel of judicial experts to assist in IPR investigations;
- Amendments in legislation to clarify that personal use of pirated material is a criminal offense and to increase penalties for violations;
- Checking for pirated software at private companies during their tax audits;
- Continued prohibitions on the use of pirated materials by the public sector;
- Strengthened data exclusivity for pharmaceutical products, in line with EU regulations;
- Avoiding damaging amendments to the draft patent law; and
- Avoiding the use of competitors' experts as witnesses when IPR cases are tried in court.

#### Patent Institute Sees Reform Moving Ahead, But Slowly

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¶5. (C) Econoff met with Ahmet Kocer of the Turkish Patent Institute to discuss the current status of the draft patent law and the two troubling amendments reported on in reftel (and to which YASED referred in its report). Kocer is confident that the law will eventually pass, but noted that the GOT is preoccupied with both the financial crisis and with achieving victory in the March municipal elections. The patent law is a complicated and highly technical document, and may be too weighty to take on when the GOT is looking for quick fixes to financial problems and for popular reforms. As such, he suggested that the full law will probably not be considered until after the elections.

¶6. (C) While yet another delay in the patent law is less than welcome, Kocer said there is no chance of passage for the two amendments. He noted that all of the agencies involved in IPR regulation and enforcement had come out against the amendments, which would seriously weaken IPR protection in Turkey and violate Turkey's EU and WTO obligations. He described the amendments as political maneuvers carried out "to make certain people look good and feel important," but without any realistic possibility of their passage.

#### Constitutional Court Decision Could Invalidate IPR Cases

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¶7. (C) Kocer did predict that there would be rapid action on one legislative front. In July, the Constitutional Court ruled that the existing trademark regulations (which were enacted by decree rather than legislated) could not impose criminal penalties. The Court gave the government until January 2009 to patch this legal gap by passing new legislation. If no new law is passed by then, most pending trademark violation cases would be invalidated and many current violations would become lawful. Kocer noted that the GOT is cognizant of the issue and predicted that the relevant enabling legislation (currently part of the draft patent law) would be separated out and passed on its own before the end of the year.

¶8. (C) Mustafa Akkus, Deputy DG for European Union Affairs at the Ministry of Justice, and Hulya Cetin, an IPR judge in the

same office, are also certain that some sort of judicial patch will be forthcoming. They noted with concern, however, the possibility that as a temporary solution the Parliament might simply enact the proposed Hakki Koylu amendment to the patent law (described in reftel) as a separate law of its own. This would have the effect of retaining criminal penalties for IPR, but would severely reduce their applicability (essentially, only goods produced in Turkey would be protected). Pending cases involving goods produced outside of Turkey would still be invalidated. Supposedly, the Koylu amendment would then be superseded when the full patent law is passed, restoring the broader scope of penalties. But even assuming the full patent law was later passed, it would not revive the pending cases that had been thrown out. Akkus and Cetin were by no means certain that Parliament would choose the Koylu amendment as a stopgap measure, but worried that it might appeal to legislators as an apparently easier option than separating out the penalty portions of the draft patent law. Post will continue to monitor and report on this issue.

Comment

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18. (C) The legal regime for IPR protection in Turkey has been gradually improving in recent years, albeit at a frustratingly slow pace. As noted by YASED, however, there has not been a concomitant improvement in IPR enforcement and violations continue to be widespread (a situation that will only worsen if criminal penalties are lifted as a result of the Constitutional Court ruling or if an ill-advised decision is taken to pass the Koylu amendment). The new patent law would be a major step forward, but the GOT does not seem to be in any rush to pass it. The key to moving it along will be to emphasize the financial benefits that can accrue to Turkey from improved IPR protection. The YASED report is a helpful tool for doing this. Post will continue to stress to our Turkish interlocutors the linkage between IPR and FDI, an argument that may have particular resonance in 2009, when FDI is expected to slow substantially as a result of the financial crisis.

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Jeffrey